

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**B. P. J., by her next friend and mother,
HEATHER JACKSON,**

Plaintiff,

v.

**CIVIL ACTION NO. 2:21-cv-00316
Judge Joseph R. Goodwin**

**WEST VIRGINIA STATE BOARD OF
EDUCATION, HARRISON COUNTY
BOARD OF EDUCATION, WEST VIRGINIA
SECONDARY SCHOOL ACTIVITIES
COMMISSION, W. CLAYTON BURCH, in
his official Capacity as State Superintendent,
DORA STUTLER, in her official capacity as
Harrison County Superintendent, and THE
STATE OF WEST VIRGINIA,**

Defendants.

and LAINEY ARMISTEAD,

Intervenor Defendant.

**Motion of Defendant State of West Virginia to (1) Strike Expert Opinion of
Professor Mary Fry, (2) Exclude Mary Fry from providing Expert Testimony
and (3) for a Daubert Hearing.**

Now comes Defendant State of West Virginia and moves this Court to (1) Strike the Declaration of Mary Fry (ECF289-20) submitted to this Court in connection with the Plaintiff's Motion for Summary Judgement (the "Plaintiff's MSJ Motion") (2) exclude Mary Fry from providing testimony at any hearing or at any subsequent trial and (3) hold a Daubert hearing regarding Mary Fry.

The grounds for this Motion are that Mary Fry's proffered testimony is not relevant under Fed. R. Evid. 401(b) and does not satisfy the requirements of Fed. R. Evid. 702 under *Daubert v.*

Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 589 (1993). These grounds are set forth more fully in the Memorandum in Support filed concurrently herewith.

Respectfully submitted,

PATRICK MORRISEY
West Virginia Attorney General

/s/ Curtis R. A. Capehart
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Chief Deputy Attorney General
Curtis R.A. Capehart (WV Bar # 9876)
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Counsel for Plaintiff, STATE OF WEST VIRGINIA

DATE: May 12, 2022

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Intervenor Defendant.

CERTIFICATE OF SERVICE

I hereby certify that, on this 12th day of May 2022, I electronically filed the foregoing Motion with the Clerk of Court and all parties using the CM/ECF System.

/s/ Curtis R. A. Capehart

Curtis R. A. Capehart